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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 318/2022

THE PR. COMMISSIONER OF INCOME TAX-3 Appellant

Through: Mr.Ruchir Bhatia, Sr.Standing
Counsel with Ms.Mansie Jain,
Advocate.

versus

EMMSONS INTERNATIONAL LTD. Respondent

Through: None.

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Date of Decision: 12th September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the Order dated 14th October, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4603/Del/2019 for the Assessment Year 2012-13.
2. Learned Counsel for the Appellant states that the ITAT has erred in deleting the Notional Forex Loss of Rs.8,95,40,121/- disallowed by the Assessing Officer by relying upon the decision of Supreme Court in the case of *CIT Vs. Woodward Governor India Ltd., 312 ITR 254(SC)* which was rendered in respect of actual transactions in contradiction to notional transactions in the case of Assessee.



3. He further submits that the ITAT has erroneously held that the CBDT Circular/Instruction is contrary to the decision of the Supreme Court in the case of *CIT Vs. Woodward Governor India Ltd* (supra).

4. This Court is of the opinion that the issue of law raised by the petitioner has been conclusively settled by the Supreme Court in *CIT Vs. Woodward Governor India Ltd* (supra) and *Oil and Natural Gas Corporation Ltd., Dehradun though Managing Director Vs. The Commissioner of Income Tax, Dehradun, AIR 2010 SC 1927*. The relevant portion of the latter judgment, wherein the earlier judgment has been followed, is reproduced hereinbelow:-

“Having carefully perused the decision of this Court in Woodward case , we are of the opinion that both the issues stand concluded by the said decision. Dealing with the said issues extensively, speaking for the Bench, S.H. Kapadia, J, summarised the following factors which should be taken into account in order to find out if an expenditure on account of fluctuation in the foreign currency rates, when the Assessee is following the mercantile system of accounting, is deductible:

- (i) whether the system of accounting followed by the assessee is the mercantile system, which brings in the debits of the amount of expenditure for which a legal liability has been incurred even before it is actually disbursed and credits, what is due, immediately it becomes due even before it is actually received;*
- (ii) whether the same system is followed by the assessee from the very beginning and if there was a change in the system, whether the change was bona fide;*
- (iii) whether the assessee has given the same treatment to losses claimed to have accrued and to the gains that may accrue to it;*
- (iv) whether the assessee has been consistent and definite in making entries in the account books in respect of losses and gains;*
- (v) whether the method adopted by the assessee for making entries in the books both in respect of losses and gains is as per nationally accepted accounting standards;*



(vi) whether the system adopted by the assessee is fair and reasonable or is adopted only with a view to reducing the incidence of taxation.

Applying these factors on the facts of that case, it was held that the “loss” suffered by the assessee, maintaining accounts regularly on mercantile system and following accounting standards prescribed by the Institute of Chartered Accountants of India (ICAI), on account of fluctuation in the rate of foreign exchange as on the date of balance sheet was an item of expenditure under Section 37(1) of the Act, notwithstanding that the liability had not been discharged in the year in which the fluctuation in the rate of foreign exchange occurred. “

5. In fact, in view of the factual findings of the ITAT, this Court is of the opinion that all the aforesaid conditions stipulated by the Supreme Court stand satisfied in the present case.

6. As far as the finding of the ITAT that the CBDT Circular No.3/2010 dated 23rd March, 2010 is contrary to the judgment of the Supreme Court in ***Oil and Natural Gas Corporation Ltd., Dehradun though Managing Director Vs. The Commissioner of Income Tax, Dehradun*** (supra) and ***CIT Vs. Woodward Governor India Ltd*** (supra), this Court is of the view that the same was not called for, as the said CBDT Instruction has been issued in respect of loss on account of trading in foreign exchange derivatives. In the present case, however, the assessee had entered into derivative contracts in order to hedge its exchange risk in respect of export proceeds receivable by it in foreign exchange. Forward contracts entered into by the assessee were not by way of trading per se in foreign exchange derivatives. Consequently, CBDT Circular No.3/2010 dated 23rd March, 2010 has no application to the facts of the present case.



7. In view of the aforesaid, this Court is of the opinion that no substantial question of law arises for consideration in the present case. With the aforesaid clarification, the present appeal is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 12, 2022
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